Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4812 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEMORIAL HERMANN HOSPITAL SYSTEM
3200 SW FREEWAY SUITE 2200
HOUSTON TX 77027

Carrier's Austin Representative Box
01

MFDR Date Received
MARCH 7, 2007

Respondent Name
LIBERTY MUTUAL INSURANCE CO

MFDR Tracking Number
M4-07-4085-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated March 6, 2007: "It is the hospital's position that the hospitalization was an emergency as defined pursuant to the Acute Care Hospital Fee guideline. Liberty Mutual issued an underpayment of $3,354.00 and denied any additional reimbursement on the basis that preauthorization was not obtained. However, pursuant to the Fee Guideline, preauthorization is not required for emergency admissions." "It is the hospital's position that the patient required emergency medical treatment to resolve his complicated medical condition."

Requestor's Supplemental Position Summary Dated December 12, 2011: "The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed $40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method". "Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement."

Affidavit of Michael C. Bennett dated November 1, 2011: "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital')." "The charges reflected on the attached Exhibit A are the usual and customary fees charged for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf." "On the dates stated in the attached records, the Hospital provided medical care and services to this patient who incurred the usual and customary charges in the amount of $42,059.00 which is a fair and reasonable rate for the services and supplies provided during this patient's hospitalization. Due to the nature of the patient's injuries and need for surgical intervention, the admission required unusually costly services."

Affidavit of Patricia L. Metzger dated November 21, 2011: "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and extent of injury, the services and procedures performed on this patient were complicated and unusually extensive."

Amount in Dispute: $38,705.00

RESPONDENT'S POSITION SUMMARY

Respondent's Packet Dated March 16, 2007: "The bill was paid per the Texas Fee Schedule, Inpatient Surgical Per Diem @ $1118.00 per day x 3 days =$3354.00. No Carve outs were present on the bill. No PPO discount was applied." "Although the claimant remained in the facility for 7 days, only 3 of the seven days were authorized." "The facility did call for an extension of 3 days. Three days were approved. The facility failed to call for additional days beyond the three day extension. Liberty Mutual paid three days at the inpatient rate. The remainder of days were denied as not authorized."

Response Submitted by: Liberty Mutual Insurance Co., 2875 Browns Bridge Rd., Gainesville, Georgia 30503

Respondent's Supplemental Position Summary Dated November 30, 2011: "Requestor has failed to meet the Austin Third Court of Appeals' mandate that, to qualify for reimbursement under the Stop-Loss Exception (former 28 Tex. Admin. Code §134.401 (c)(6)) a hospital must demonstrate two things: the services it provided during the admission were unusually costly and unusually extensive, and its total audited charges exceeded $40,000." "Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any rationale for the Requestor's qualification for payment under the Stop-Loss Exception. Respondent appropriately issued payment. No additional monies are due to the Requestor."

Response Submitted by: Hanna & Plaut, L.L.P., Attorneys At Law, Southwest Towe,r 211 East Seventh Street, Suite 600, Austin, Texas 78701

Respondent's Supplemental Position Summary Dated March 19, 2012: "Respondent properly reimbursed this claim. While the emergency admission did not require preauthorization, the remainder of Claimant's inpatient hospitalization and medical procedures did require concurrent review, per 28 TEX. ADMIN. CODE §134.600. Provider obtained Carrier's approval for three days of hospitalization. Provider billed $42,059 in facility fees related to Claimant's seven-day admission. Carrier paid Provider $3,354 at a three day *per diem* rate in reimbursement for the approved portion of the admission. Provider seeks an additional $38,705 in reimbursement. Carrier owes no additional payment to Provider due to the lack of authorization for the remaining four days of hospitalization." "Moreover, Carrier properly used the *per diem* reimbursement methodology and Provider has no basis on which to assert stop-loss eligibility. The record bears no support that this admission involved unusually extensive services. Claimant was admitted on March 8, 2006 but did not undergo the primary procedure until March 12, 2006. His pre-operative course was both uneventful and unnecessary. Additionally, there were no procedural or post-procedural complications and Claimant was discharged on the third post-operative day. Provider's facility fee charge of $42,059 does not equate to the existence of "unusually costly" services. Indeed, charges for facility fees prior to the March 12th procedure should be stricken from the bill due to lack of necessity and authorization. Provider additionally offers no explanation for its exorbitant $20,679.75 charge for nongeneric drugs. There is simply no indication that the standard *per diem* rate for facility fees related to the routine procedure is not sufficient reimbursement."

Response Submitted by: Hanna & Plaut, L.L.P., Attorneys At Law, Southwest Towe,r 211 East Seventh Street, Suite 600, Austin, Texas 78701

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
March 8, 2006 through March 15, 2006	Inpatient Hospital Services	$38,705.00	$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.

2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §134.600, 29 *Texas Register* 2360, effective March 14, 2004, requires preauthorization for specific treatments and services.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- Z585 – The charge for this procedure exceeds fair and reasonable.
- Z695 – The charges for this hospitalization have been reduced based on the fee schedule allowance.
- X377 – The payer requires pre-certification for each day of an inpatient hospital stay. A portion of the room and board charges are being denied because the number of pre-certified days has been exceeded or there was no record of pre-certification by First Health's utilization/medical management department.
- W10-No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology.
- W1-Workers Compensation state fee schedule adjustment.
- 62-Payment denied/reduced for absence of, or exceeded, pre-certification/authorization.
- X598-Claim has been re-evaluated based on additional documentation submitted; no additional payment due.

Issues

1. Does a preauthorization issue exist in this dispute?
2. Did the audited charges exceed $40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges ***in this case*** exceed $40,000; whether the admission and disputed services ***in this case*** are unusually extensive; and whether the admission and disputed services ***in this case*** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection…" 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the respondent denied reimbursement for date of service March 11, 2006 through March 15, 2006 based upon "62-Payment denied/reduced for absence of, or exceeded, pre-certification/authorization, and X377 – The payer requires pre-certification for each day of an inpatient hospital stay. A portion of the room and board charges are being denied because the number of pre-certified days has been exceeded or there was no record of pre-certification by First Health's utilization/medical management department".

28 Texas Administrative Code §134.600(i) states "The health care requiring concurrent review for an extension for previously approved services includes: (1) inpatient length of stay."

The respondent states "Respondent properly reimbursed this claim. While the emergency admission did not require preauthorization, the remainder of Claimant's inpatient hospitalization and medical procedures did require concurrent review, per 28 TEX. ADMIN. CODE §134.600. Provider obtained Carrier's approval for three days of hospitalization. Provider billed $42,059 in facility fees related to Claimant's seven-day admission. Carrier paid Provider $3,354 at a three day *per diem* rate in reimbursement for the approved portion of the admission. Provider seeks an additional $38,705 in reimbursement. Carrier owes no additional payment to Provider due to the lack of authorization for the remaining four days of hospitalization."

The requestor did not submit a preauthorization report to support that the additional four inpatient hospital days were preauthorized in accordance with 28 Texas Administrative Code §134.600(i)(1); therefore, a preauthorization issue does exist in this dispute.

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "…to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed $40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "…Audited charges are those charges which remain after a bill review by the insurance carrier has been performed…" Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal $42,059.00. The Division concludes that the total audited charges exceed $40,000.
3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services" and further states that "…independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." The requestor in its original position statement states that "It is the hospital's position that the hospitalization was an emergency as defined pursuant to the Acute Care Hospital Fee guideline. Liberty Mutual issued an underpayment of $3,354.00 and denied any additional reimbursement on the basis that preauthorization was not obtained. However, pursuant to the Fee Guideline, preauthorization is not required for emergency admissions." "It is the hospital's position that the patient required emergency medical treatment to resolve his complicated medical condition." This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: "The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed $40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method". "Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement." In support of the requestor's position that the services rendered were unusually extensive, the requestor submitted affidavits from the System Executive of Patient Business Services for Memorial Hermann Healthcare System, and from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor's supplemental position and affidavits failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar surgical services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
4. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor's position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar surgical services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements.* The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the

stop-loss threshold described in subsection (c)(6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of $1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission…" The length of stay was seven days; however, documentation supports that the Carrier pre-authorized a length of stay of three days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed is $3,354.00 for the three authorized days.
- 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than $250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed $573.25/unit for Quinupristin/Dalforpr 500mg injection. The requestor did not submit documentation to support what the cost to the hospital was for these items billed for pharmaceuticals. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is $3,354.00. The respondent issued payment in the amount of $3,354.00. Based upon the documentation submitted no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed $40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount,* and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to $0.00 additional reimbursement for the services in dispute.

Authorized Signature

		12/5/2012
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.